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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,794	11/24/2003	Pascal Lenormand	P24470	1559
7055	7590	08/09/2005	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			STASHICK, ANTHONY D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,794

Applicant(s)

LENORMAND, PASCAL

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01292004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear how the upper can be both “substantially non-extensible” and “at least partially extensible” s claimed in lines 3 and 5-6 of claim 1.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by the French reference to Doddi et al. 2,619,490. Doddi et al. '490 discloses all the limitations of the claims including the following: (see Figure 4) a sole 2a, 2c; a substantially non-extensible upper 8; an elastic element 11 surrounding a heel area of the upper; the upper further comprising a heel portion 9, 11; the heel portion being at least partially extensible 11; the entirety of the heel portion of the upper is constituted by an extensible material 9, 11; the extensible heel portion of the upper extends upwardly to an upper edge of the upper (extends entire height of the upper); the extensible heel portion of the upper has a height of at least 20% of the upper along at least a

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substantially vertical line (entire height of the upper); the extensible heel portion of the upper has a length of at least 10 millimeters along at least a substantially horizontal line (see Figure 4); the extensible heel portion of the upper is made of elastic material Portion 11 is elastic); the elastic element is a strap extending downwardly and forwardly from a rear end of the heel area (extends forwardly from the heel to forefoot area and downwardly from the top of the upper to the bottom of the upper); the article of footwear is a climbing shoe having a form-fitting upper (see Figure 4, shoe can be used for climbing).

5. Claims 14-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lange et al. 797,966. Lange et al. '966 discloses the limitations of the claims including the following: a sole B; an upper A. I, J; the upper comprising a front portion A, I and a rear portion J, Q; the front and rear portions having a junction at an area corresponding to an ankle of a wearer of the shoe (where Q is stitched to the front portion in Figure 1); at least the front portion of the upper comprising a substantially non-extensible construction (shown in Figure 1 as non-extensible); at least a part of the rear portion of the upper being constructed to be extensible (elastic portion Q); an elastic strap member (that made by H, N, M) to apply a force to a foot of the wearer of the shoe forwardly; the elastic strap member extending around surrounding a heel area of the upper and extending forwardly and downwardly from a rear of the upper on each of opposite sides of the upper (see Figures 2 and 3, extends forwardly and the height makes it extend downwardly); the junction of the front and rear portions of the upper comprise at least one line of stitching extending upwardly from the sole (se Where Q is stitched to A in Figure 1); forward of the junction line, the front portion of the upper is made of a non-extensible material and rearward of the junction line the rear portion of the upper is made of substantially extensible material (see

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Figure 1); the junction of the front and rear portions of the upper comprises at least one line of stitching extending upwardly from the sole on each of opposite sides of the upper (see Figure 1 where Q is attached to A); the rear portion of the upper includes, on opposite sides of the upper, rearward of the junction, a pair of opposite elastic portions (Q and N); the elastic portions of the rear portion extending downwardly from opposite upper edges of the upper (see Figure 1); the elastic portions of the rear portion extending downwardly from the upper edges of the upper at least about 20% of a distance between the sole and the upper edges of the upper (Q extends the whole height of the upper); the elastic portions of the rear portion having a width extending in a front-to-rear direction, at least at an upper end of the elastic portions, of at least 10 millimeters (q is at least 10 millimeters long); the shoe is a slipper and the front and rear portions of the upper are form-fitting and flexible (slipper used as burial shoe).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, 9 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French reference to Doddi et al. 2,619,490 as applied to claim 1 above in view of Williams 2002/0178616. Doddi et al. '490 as applied to claim 1 above discloses all the limitations of the claims except for the inside of the extensible upper portion covered with adhesive material, the heel portion of the upper having the inside covered with PU, PVC or silicone, the elastic element

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being a shell that completely surrounds the heel area and the shell having a lining made of moisture absorbing material. Williams '616 teaches that the heel area of a shoe can be made of synthetic plastic (an adhesive material, especially when in a more liquid form) and that the inside can be covered with PU or PVC (the plastic used for the heel part 12) with the elastic element being a shell that completely surrounds the heel area (as shown in Figures 2-4). With respect to the lining, it is well known in the art of shoe making to place a shoe liner or lining on the inside of a shoe upper and have it made of material that absorbs moisture, such as a sock lining. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the heel area of Doddi et al. '490 out of plastic, to lighten the shoe, covering the inside of it with plastic (made of the same material as the rear part of the shoe) with an elastic element being a shell that completely surrounds the heel, as taught by Williams '616, to allow for the shoe to expand and easily slip on feet of different lengths. Furthermore, it would have been obvious to line the inside of the shoe with moisture absorbent material to prevent foot odor and the build up of athlete's foot on the individual user by wicking away the moisture from the user's foot during use.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

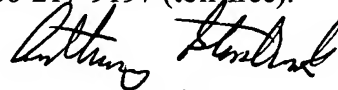
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561.

The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS